"The sentence is manifestly excessive."

At the hearing of the appeal the learned defence counsel referred me to section 74(3) of the Road Traffic Ordinance, 1958. That subsection and the proviso read as follows:

"(3) A person disqualified by virtue of a conviction under this section or of an order made thereunder for holding or obtaining a driving licence shall, for the purposes of Part II of this Ordinance, be deemed to be disqualified by virtue of a conviction under the provisions of that Part:

Provided that a person shall not be convicted of an offence against this section if he proves —

(a) that the vehicle did not belong to him and was not in his possession under a contract of hiring or loan; and

(b) that he was using such vehicle in the course of his employment; and

(c) that he neither knew, nor had reason to believe that there was not in force in relation to such user a policy of insurance or such security as complies with the provisions of this Part."

According to the defence counsel in this particular case the appellant was only an employee and the vehicle did not belong to him nor was it in his possession under a contract of hiring or loan; and if he could have satisfied the court that he neither knew nor had reason to believe that there was no insurance policy, he could not have been convicted under the two charges.

There was nothing on record to show any of the above things, so I have declined to interfere with the acceptance of the plea of guilty by the learned magistrate. The appellant was not represented by a counsel at the trial.

I would, therefore, suggest that in future all magistrates bring to the notice of persons who are brought before them and charged under section 74, and who are not represented by counsel, the provisions of the proviso. If the accused could prove or is in a position to prove all those things stated in the proviso, then no doubt in my view the proper person to be charged would be the owner and employer of the driver since a person who causes or permits another person to use such motor vehicle also commits an offence under the section. In such circumstances no doubt the magistrate could consider appropriate punishments, something heavier than a mere fine of $50. I think everyone is aware of the reasons for the provisions requiring that motor vehicles be insured against third party risks, namely to protect the rights of persons injured or dependants of deceased persons killed in motor vehicle accidents. The failure on the part of the owner of a motor vehicle to take out an adequate insurance against third party risks would deprive such injured persons or dependants of deceased persons of the right to adequate compensation under the law.

I would direct that this judgment be sent out to all presidents and magistrates in Johore for their information.

Order accordingly.

CHENG KENG HONG v. GOVERNMENT OF THE FEDERATION OF MALAYA

[O.C.J. (Raja Azlan Shah J.) February 28, 1966]

[K.L. — Originating Summons No. 39 of 1965]

Contract — Tender — Acceptance of tender — Whether principal bound by representations of agent — Trade usage — Powers of arbitrator — Contracts (Malay States) Ordinance, 1950 — Evidence Ordinance, 1950, s. 92.

In this case the Chief Architect of the Ministry of Education had issued a notice inviting tenders for the erection of a school. The applicant tendered for the work and his tender was accepted. A contract was entered into which recited the drawings and specifications according to which the work was to be done. The applicant discovered that the specification for electrical service was at variance with the layout drawings and thereupon wrote to the Chief Architect. He received a letter from a Mr. Hewish for the Chief Architect that extra payment would be paid for fittings, other than those mentioned in the specifications. Mr. Hewish was an architect appointed to supervise the work. Subsequently the Government refused to pay any extra payment and the matter was referred to arbitration. Clause 40 of the contract provided for arbitration and stated that the arbitrator should have power to review and revise any certificate, opinion, decision, requisition or notice and to determine all matters in dispute submitted to him in the same manner as if no such certificate. opinion, decision, requisition or notice had been given. The arbitrator found that the applicant was justified in assuming that Mr. Hewish had authority to act for the Government but held that he could go behind the letter of Hewish and hold that the applicant was not entitled to extra payment. The arbitrator referred the following two questions to the court — (1) whether the letter signed by Mr. Hewish is binding on the respondents and/or gives rise to an estoppel whereby the respondents are precluded from disputing the authority of Mr. Hewish; (2) in the event that question (1) be answered in the affirmative whether the arbitrator was entitled under clause 40 of the contract to review the letter itself and to hold that the decision contained in the letter was wrong in principle and that no extra payment should be made to the applicant for the fittings in question.

Held: (1) although Mr. Hewish had no authority to sign the letter for the Chief Architect, the respondents had by their conduct represented or permitted to be represented to the applicant that Mr. Hewish had the authority to act on their behalf and consequently the respondents were bound by their acts to the same extent as if he had the authority; therefore in the circumstances the respondents were estopped from disputing the authority of Mr. Hewish;

(2) the arbitrator had power to review the letter under clause 40 of the contract and that in the circumstances of this case the arbitrator was justified in going behind the letter and holding that the decision to pay the extra payment for the electrical fittings was wrong;

(3) there was no custom as alleged that if any work was done according to the drawings which was not set out in the specification, extra payment would be made, as such usage would be inconsistent with the contract, which consists of the tender, acceptance and other relevant documents.

Cases referred to:—

(1) *Attorney-General for Ceylon* v. *A. D. De Silva* [1953] A.C. 461 at p. 479.

(2) *Lakshmi Narainsingha Swami* v. *Patta Sahuani* A.I.R. 1957 Orissa 86.

(3) *Ramsden* v. *Dyson* 14 W.R. 926 at p. 933.

(4) *Ram Pertab* v. *Marshall* (1899), I.L.R. 26 Cal. 701.

(5) *Tersons Ltd.* v. *Stevenage Development Corporation* [1965] 1 Q.B. 37, 51.

(6) *London Export Corporation Ltd.* v. *Jubilee Coffee Roasting Co. Ltd.* [1958] 1 W.L.R. 661.

ORIGINATING SUMMONS.

Heng Cheng Swee for the applicants.

Mrs. Ng Mann Sau (Federal Counsel) for respondents.

Cur. Adv. Vult.

Raja Azlan Shah J.: The award of the arbitrator, dated 26th July 1964, was stated in the form of a special case.

The Chief Architect to the Ministry of Education on behalf of the Government of the Federation of Malaya issued a notice inviting tenders for the erection and completion of Sekolah Lanjutan Kampong at Mukim of Sungei Pasir, District of Kuala Muda, Kedah. Copies of the contract agreement, drawings and specification could be seen at the place specified in the tender notice during office hours on any working day. The applicant tendered for the work and his tender was accepted. A contract designated as Contract No. ME/AB 42 of 1962 was entered into between the applicant and the Government on 15th May 1962. The contract recites:

"WHEREAS the Government is desirous of erecting and completing Sekolah Lanjutan Kampong at Mukim of Sungei Pasir, District of Kuala Muda, Kedah, and has caused drawings and a specification describing the work to be done to be prepared: AND WHEREAS the said drawings numbered (there are several of them included electrical layout drawings annexed) (hereinafter referred to as the contract drawings), and the specification schedule of rates, form of tender and letter of acceptance of tender have been signed by or on behalf of the parties hereto:.....".

The relevant paragraphs of the said contract are clause (3) which defines the term 'contract' as "the documents forming the tender and acceptance thereof, together with the documents referred to therein including the conditions annexed hereto, the specification, schedule of rates and drawings and all these documents taken together shall be deemed to form one contract and shall be complementary to one another", and clause (4) which defines 'superintending officer' as "the Chief Architect, Ministry of Educaton, and his successors in office and also such person or persons as may be deputed by him in writing to act on his behalf for the purpose of this contract".

The contract documents comprise the following:

(a) The contract form (P.W.D. 203).

(b) Conditions of contract. The relevant clauses are:

"(4). The contractor shall provide everything necessary for the proper execution of the works according to the true intent and meaning of the drawings and specification taken together whether the same may or may not be particularly shown or described provided that the same is reasonably to be inferred therefrom and if the contractor finds any discrepancy therein he shall immediately and in writing refer the same to the superintending officer who shall decide which shall be followed....." and "(40). Provided always that in case any dispute or difference.....The arbitrator shall have power to review and revise any certificate, opinion, decision, requisition or notice and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given as aforesaid, in the same manner as if no such certificate, opinion, decision, requisition or notice had been given".

(c) Form of tender which reads *inter alia*: "Tender for the erection and completion of Sekolah Lanjutan Kampong.....in accordance with drawings number (a list of contract drawings was annexed) and any other detail drawings supplied in application thereof".

(d) Summary of tenders which gives the description of works in respect of each building including electrical installations. The preamble reads: "All the drawings upon which this tender is to be based are listed on the 'form of contract' (P.W.D. 203) included in the tender table documents. For full particulars of the works listed below the Tenderer should refer to the above drawings and the specifications. The tender will be deemed to include for everything shown or described therein including all ancillary works. Works described as including 'electrical installation' shall be deemed to include for all electric fittings shown on the electrical layout drawings and described in the specification for 'electric service' ".

(e) Acceptance of tender which is "subject to the conditions of contract, specification and/or bills of quantities, form of tender and this letter.....".

(f) Specification which "should not be read wholly, but in conjunction with the drawings and appendices which are affixed to the basic specification".

(g) Appendices eight in number to basic building specification.

(h) Electrical service clause (1) reads: "The scope of work under this heading comprises the supply of all materials, fittings, labour, cartage, tools etc. necessary for the execution and completion of the electric light and power installations to all the buildings built under the contract in accordance with this specification, schedule, plans and agreement to the satisfaction of the Senior Architect"; clause (18), "All light points, shown on plans, shall be fitted with ceiling roses, twin flexible coils, lamp-holders and 10" opal or white plastic shades and 60 watt frosted bulbs"; clause (19), "Two 60" G.E.C. ceiling fans complete with all accessories and connections shall be provided one in each headmaster's office. Two fan points (without fans) shall be provided one in each teacher's room and one in the clerks' section".

(i) Contract drawings as defined in the recital to the contract.

The applicant discovered that the specification for electrical service, namely clauses 18 and 19, were at variance with the electrical layout

drawings. Accordingly on 19th May 1962 he wrote to the Chief Architect at Kuala Lumpur for clarification pursuant to clause 4 of the Conditions of Contract. It is pertinent to refer to the said letter which is as follows:

" 19th May, 1962,

Confidential.
The Chief Architect,
Ministry of Education,
Young Road,
Kuala Lumpur.

Sir,

Construction of Primary Schools at Slim River, Perak, & Sekolah Lanjutan Kampong at Mukim of Sungei Pasir, District of Kuala Muda, Kedah.

I beg to advise that in tendering for the above contracts I had based my estimate of tender on the specifications included in the tender table documents. I now find that the plans do not accord fully with the specifications in respect of electrical works.

Since these specifications are basic documents wherein the scope of a particular type of works is described and indicated and as my tenders have been based thereon I shall be grateful if you will confirm that the above contracts should be undertaken under the requirements of the specifications.

Yours faithfully,
(Sgd) Cheng Keng Hoong. "

On 8th June 1962 the applicant received the following reply:

" Ministry of Education,
Kuala Lumpur.
8th June, 1962.

Mr. Cheng Keng Hoong,
125/7, Cowan Street,
Ipoh.

Technical Education, Perak.
Sekolah Lanjutan Kampong (Boys),
Sungei Patani.

With reference to your letter dated the 19th May 1962, I confirm that only the electrical fittings described in the specification are included in the contract.

Please supply and fix the electrical fittings shown on the drawings. Any fittings, other than those mentioned in the specification, will be paid for as an extra amount shown in the contract.

(Sgd) R. A. Hewish, Arch. (N).
for Chief Architect,
Ministry of Education. "

In accordance with instructions (*supra*) the applicant executed the "extra" work. In January 1963 all Ministry of Education contracts were taken over by the Public Works Department. The applicant duly completed the contract on 6th May 1963 and in due course submitted a bill for $31,592.44 as representing the cost of extra supplied by way of electrical fittings. On 11th July 1963 Jurutera Negeri, Kedah & Perlis, on the instruction of the Director of Public Works wrote to the applicant "that no extra payments will be made for the electrical fittings in dispute".

The matter was referred to arbitration on 20th October 1964 and the arbitrator gave his award on 26th November 1964. The arbitrator found the following facts: (i) The applicant noticed the discrepancy between the specification and the drawings at the time of tendering but put in an unqualified tender in the expectation that he would be paid extra for the electrical work shown in the drawings but not mentioned in the specification; (ii) After acceptance of his tender he wrote to the Chief Architect, Ministry of Education, on the 19th May 1962 drawing attention to the discrepancy and he received by way of reply the said letter of the 8th June 1962; (iii) Mr. Hewish had the physical supervision of the contract so far as it had been performed up to the 8th June 1962, and continued so to supervise up to October 1962, and during this time wrote a number of letters on Government letterhead signed 'for Chief Architect, Ministry of Education'. The applicant was accordingly justified in looking to Mr. Hewish and in assuming that Mr. Hewish was the proper authority to give him instructions and to make decisions in connection with the work. Mr. Hewish was held out by the Government in effect as their representative and agent in the performance of this contract; (iv) The applicant acted in bad faith in deliberately not qualifying his tender although he was aware of the discrepancy aforementioned. The applicant knew that on previous occasions in such tenders he and other contractors had received payment of extra on the basis now claimed; (v) In a tender of this nature (without bills of quantities) the extent of the work must be shown on the drawings to enable the tenderer to measure what is required and give details of preliminary items. A reading of the whole of the contract documents including the drawings shows quite clearly that the intention was that the applicant was to include in the contract price the whole of the electrical fittings shown on the drawings; (vi) Mr. Hewish in writing the letter of the 8th June 1962 was wrong in agreeing to pay extra for electrical fittings shown on the drawings but not mentioned in the specification, and should have informed the applicant that he was obliged to instal all electrical fittings shown on the drawings without extra payment.

The questions for the court are (i) whether the said letter of the 8th June 1962 signed by Mr. R. A. Hewish is binding upon the respondents and/or it gives rise to an estoppel whereby the respondents are precluded from disputing the authority of Mr. Hewish; (ii) in the event that question (i) above be answered in the affirmative, whether clause 40 of the conditions of contract entitled the arbitrator to review the letter itself and to hold that the decision contained in the said letter was wrong in principle and that no extra payment should be made to the applicant for the fittings in question.

Subject to the opinion of the court the arbitrator awarded (1) in the event the court deciding the first question of law in the affirmative and the second question in the negative, the applicant would be paid the sum of $31,592.44 for electrical light fittings and ceiling fans as shown in Appendix 'A' of his statement of claim dated 23rd November 1963, the respondents would pay all costs in connection with this arbitration, and the respondents would pay the arbitrator's charges and expenses of $1,375.69 plus $200.00 the cost of preparing this award, making a total of $1,575.69; (2) in the event the court deciding the first question of law in the negative, or the first and second questions of law in the affirmative, the applicant would provide and fix all electrical light fittings and ceiling fans as shown on the electrical layout drawings without any addition to his contract amount for so doing, the applicant would pay all costs in connection with this arbitration and the applicant would pay the arbitrator's charges and expenses of $1,375.69 plus $200.00 the cost of preparing this award, making a total of $1,575.69.

The first question I have to consider is whether the said letter of 8th June 1962 gives rise to an estoppel whereby the respondents are precluded from disputing the authority of Hewish.

In substance, the argument for the applicant was that acting on the faith of the representation of the said letter which was written on a Ministry of Education letter-head and signed for the Chief Architect he *bona fide* believed that Hewish had authority to sign it. It was further argued that Hewish had written similar letters on these letter-heads and had signed them for the Chief Architect. The respondents contended that Hewish was only an agent so far as supervision was concerned; there was no written letter deputising him as superintending officer as required under clause 4 of the contract. In the circumstances they said that the question of estoppel by representation did not arise. The arbitrator had found as a matter of fact that Hewish had supervision of the contract up to October 1962 and during that time had written a number of letters on Government letter-head and had signed for the Chief Architect. He accordingly found that the applicant was justified in assuming that Hewish had the authority and under the circumstances that he was held up by the Government as their representative and agent in the performance of the contract.

The general proposition of law on agency by "holding out" was stated by the Privy Council in *Attorney-General for Ceylon* v. *A. D. De Silva.*[1]

> "All 'ostensible' authority involves a representation by the principal as to the extent of the agent's authority. No representation by the agent as to the extent of his authority can amount to a 'holding out' by the principal".

This brings me to section 190 of the Contracts (Malay States) Ordinance, 1950, which enacts that where a principal induces a belief that the unauthorised acts of an agent are authorised he is bound by the consequences. The section reads:

> "When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligation if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority".

For the section to apply there must be an allegation or proof that the principal either by his words or conduct has induced a third person to believe that the acts done or obligations are within the scope of the agent's authority: *Lakshmi Narainsingha Swami* v. *Patta Sahuani.*[2] The section enacts a rule of estoppel. Lord Cranworth observed in *Ramsden* v. *Dyson*: [3]

> "If, indeed the principal knows that persons dealing with his agent have so dealt in consequence of their believing that all statements made by him had been warranted by the principal and, knowing this, allows the person so dealing to spend money in the belief that the agent had an authority, which, in fact, he had not, it may be that in such a case a Court of Equity would not allow the principal afterwards to set up want of authority in the agent".

The Privy Council case of *Ram Pertab* v. *Marshall* [4] which, however, was not decided with reference to the section, affords a guiding illustration. In that case the principal was held liable upon a contract entered into by his agent in excess of his authority, the evidence showing that the contracting party might honestly and reasonably have believed in the existence of the authority to the extent apparent to him.

Applying the law to the present case, I find that although Hewish had no authority to sign the said letter for the Chief Architect the respondents had by their conduct represented or permitted to be represented to the applicant that Hewish had the authority to act on their behalf and consequently the respondents are bound by his acts to the same extent as if he had the authority. In the circumstances the respondents are estopped from disputing the authority of Hewish.

With regard to the second question, two considerations arise: firstly, whether under clause 40 of the conditions of contract the arbitrator had power to review the said letter. It was argued on behalf of the applicant that in the absence of ambiguity the arbitrator had no power to review the said letter. It was submitted that the contents of the letter were not in dispute. The respondents contended that the arbitrator had power to decide as a matter of fact. In my view, an arbitrator derives his authority from the agreement between the parties and therefore

his powers and duties are those that the parties have agreed to place upon him. It is therefore necessary to see what the agreement stipulates. Clause 40 *inter alia* states that "in case of any dispute or difference the arbitrator shall have power to review amongst other things any opinion or decision". It is perfectly clear that the submission covers any dispute or difference. Now the dispute in issue is the said letter which contains a decision. The applicant contended that Hewish could have written it as an agent whereby the respondents are estopped from disputing his authority; on the other hand the respondents claimed that Hewish had no authority to write the letter. That issue went for arbitration as a dispute or difference arising between the parties. Accordingly I hold that the arbitrator had power under clause 40 to review that letter.

The second consideration is whether the arbitrator had power to go behind the said letter and to hold that the decision contained therein was wrong and that no extra payment should be paid to the applicant for the electrical fittings. Insofar as the question whether there was evidence upon which an arbitrator could reach a conclusion of fact is one of law. The court is not concerned with his finding of fact; the court is concerned only to see that there was evidence to support his finding: *per* Upjohn L.J. in *Tersons Ltd.* v. *Stevenage Development Corporation.*[5] Re-stating the arbitrator's finding of fact, he said that the applicant knew of the discrepancy between the specification and the drawings at the time of tendering but put in an unqualified tender which was based on the hypothesis that in the past he and other contractors had been given additional payment in respect of Ministry of Education contracts under similar circumstances. He held that in a tender of this nature (without bills of quantities) the extent of the work must be borne on the drawings to enable the tenderer to measure what was required; the specification should state the quality and type of materials required and details of preliminary items should be given. He came to the conclusion that upon reading the contract documents as a whole it was the intention that the applicant was to include in the contract price the whole of the electrical fittings as shown in the drawings. The point to consider is whether there was sufficient evidence to support the arbitrator's finding.

Before doing so I wish to consider a point raised on behalf of the applicant. It was contended that contractors working for the Ministry of Education in the past had put in their tenders based on the specification and not on the drawings for the sole reason that they had to work their tenders on a very competitive basis and therefore they were obliged to work on the minimum which was conveyed in the specification and whatever work they put in in accordance with the drawings were paid as "extras". It is now claimed that this procedure was the accepted practice and on behalf of the applicant it was said that Hewish's letter of 8th June was tantamount to a confirmation of such practice. It was further suggested that the fact that a similar contract at about the same period was given to the applicant to put up a school in Slim River and had been paid "extra" for the electrical fittings as shown in the drawings but not in the specification lends colour to such a proposition. That being so, it was contended that the said letter was not against the weight of evidence. Nothing could be more ingenious and able than the argument which I have heard in support of the case for the applicant. But that argument, ingenious and able as it appeared to be, has certainly not occasioned any doubt in my mind as to the conclusion which I shall reach, especially in the light of the authorities I am about to refer.

This so-called practice, more correctly in law called trade usage or custom, may possibly form part of a contract although not expressly incorporated in the written agreement. The incorporation of a trade usage is, however, subject to well defined principles of law and that is it must be reasonable and not so as to contradict the tenor of the contract as a whole. Jenkins L.J. in *London Export Corporation Ltd.* v. *Jubilee Coffee Roasting Co. Ltd.*[6] after exhaustively reviewing the authorities said at page 675:

> "I do not think there are any other authorities to which I can usefully refer. It appears to me, when all have been looked at, that the relevant principle of law cannot be stated with any greater precision than this: that an alleged custom can only be incorporated into a contract if there is nothing in the express or necessarily implied terms of the contract to prevent such inclusion and, further, that a custom will only be imported into a contract where it can be so imported consistently with the tenor of the document as a whole".

Consistent with the above principles, proviso (e) of section 92 of the Evidence Ordinance, 1950, enacts that oral evidence is admissible to establish a trade usage to be annexed to the written contract, but as has been noted above, such usage must be consistent with the terms and tenor of the written contract.

I have now to consider whether the alleged custom can be annexed to the contract documents in which case the applicant would be entitled to succeed, or whether the contract documents as a whole contain upon their true construction sufficient indications to support the conclusion of the arbitrator. The law with regard to acceptance of a tender is perfectly clear. The unconditional acceptance of a tender by the employer binds both parties, and a contract is thereby formed, the terms of which are ascertainable from the invitation to tender, the

tender, the acceptance, and any other relevant documents: see 3 *Halsbury's* Laws of England (3rd ed.) at page 423. In the instant case the contract documents as defined in clause 3 (*supra*) mean all documents forming the tender and acceptance together with the documents referred to therein, that is the drawings mentioned and annexed to the form of tender, the summary of tender including the tender table documents, the conditions of contract, the specification, schedule of rates and drawings, "and all these documents taken together shall be deemed to form the contract and shall be complementary to one another". The answer is therefore obvious even to the most indulgent eye. If I accede to the applicant's argument that the specification and the drawings must each be read separately and distinctly the answer would be inconsistent with the general tenor of the documents. The specification states that the contractor was to supply all materials, fittings etc. necessary for the execution and completion of the electric light and power installations. The installations are referred to in the summary of tender which describe "to include for all electrical fittings shown on the electrical layout drawings and described in the specification for 'electrical service' ". In the summary of tender, both the intent and meaning in the sense ascribed to them in clause 4 of the conditions of contract (*supra*) are clear, that is that the electrical installation as shown on the electrical layout drawings and described in the specification for electrical service is to be read into and form part of the contract. In the absence of any qualification as to electrical fittings it is not unreasonable to assume that the applicant had priced his tender inclusive of the electrical installation as shown on the electrical layout drawings. To read the electrical layout drawings in the sense contended for by the applicant gives them viability which amounts to a violation of clause 3 of the contract. I am not impressed by the arguments of the applicant that the electrical layout drawings are specific provisions which exist independently of and separate from the rest of the contract documents. For all these reasons I think the arbitrator came to the correct conclusion based on the evidence. In my judgment the alleged custom was not only a blind confidence of the most unreasonable description but also repugnant to the terms and tenor of the contract and as such was not a trade custom but merely a long established irregularity.

I therefore answer both the arbitrator's questions in the affirmative and that means the second award must stand.

Questions answered in the affirmative.

Solicitors: *Heng, Chen & Co.*

EAST ASIATIC CO. LTD. v. OTHMAN

[O.C.J. (Abdul Aziz J.) March 1, 1966]

[K.L. — Civil Suit No. 574 of 1965]

Sale of goods — Breach of contract — Question of damages — "Available market" — Sales of Goods Ordinance, 1957, s. 56 — Contracts (Malay States) Ordinance, 1950, s. 74.

The defendant had ordered a car from the plaintiff but defaulted in taking delivery. The plaintiff sued the defendant for breach of contract and claimed the sum of $1,312.30 being the difference between the agreed retail price of $6,390 and $4,477.69 which was the price at which the car was eventually sold.

Held: the plaintiff was entitled to be compensated for the loss of the profit and judgment should therefore be given for $1,312.31 cts.

Cases referred to:—

(1) *Lee Heng & Co.* v. *C. Melchers* [1963] M.L.J. 47.

(2) *Lee Hin* v. *Mohamed bin Abubakar* [1958] M.L.J. 25.

(3) *Thompson Ltd.* v. *R. Robinson Ltd.* [1955] 1 All E.R. 154.

CIVIL SUIT.

S. F. Wong for the plaintiff.

Defendant did not enter appearance.

Abdul Aziz J.: In this case the plaintiff applied by way of motion for the assessment of the damages suffered by the plaintiff as a result of the defendant's breach of agreement to take delivery of a new Fiat 1100 D Saloon in March 1965. Evidence as adduced by the plaintiff showed that the defendant placed an order for the purchase of one Fiat 1100 D motor car on 9th December 1964 at a cost of $6,498 to be delivered some time in March 1965. The defendant having defaulted in taking delivery of the car the plaintiff sued the defendant for breach of contract and claimed damages for breach of contract. Defendant not having appeared to the writ was adjudged to pay damages to the plaintiff the amount which was to be assessed by this court.

The plaintiff claimed that the damages from the breach of contract was the loss of profit of $1,312 being the differences between the agreed retail price of the car of $6,390 and $4,477.69 which was the price at which the car was eventually sold to Sharikat Fiat Distributors Limited which took over the agency of fiat cars from the plaintiff company.

In my view the case falls to be determined by section 56 of the Sale of Goods Ordinance 1957 and section 74 of the Contracts (Malay States) Ordinance 1950. Section 56 reads:—

"Where the buyer wrongfully neglects or refuses to accept and pay for the goods ordered by him the seller may sue him for damages for non-acceptance."

and the measure of damages is governed by section 74(1) which reads:—